MINUTES
of the
THIRD MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

September 19, 2012
Room 311, State Capitol

The third meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order by Representative Gail Chasey, co-chair, on Wednesday, September 19, 2012, at 10:20, a.m. in Room 311 of the State Capitol in Santa Fe.

Present
Rep. Gail Chasey, Co-Chair
Sen. Dede Feldman
Rep. Jim W. Hall
Rep. Danice Picraux

Absent
Sen. Mary Jane M. Garcia, Co-Chair
Sen. John C. Ryan

Advisory Members
Sen. Sue Wilson Beffort
Sen. Linda M. Lopez
Rep. Ray Begaye
Sen. Mary Kay Papen

Staff
Shawn Mathis, Legislative Council Service (LCS)
Theresa Rogers, LCS
Renée Gregorio, LCS

Guests
The guest list is in the meeting file.

Handouts
Copies of all handouts and written testimony are in the meeting file.

Wednesday, September 19

Representative Chasey asked both members and staff to introduce themselves and informed the committee that Roxanne Knight has retired and Ms. Mathis has replaced her as lead staff for the committee.

Human Services Department (HSD) — Breast and Cervical Cancer Program Performance Report

Julie Weinberg, director, Medical Assistance Division of the Human Services Department (HSD), and Virginia Brooks, staff manager, breast and cervical cancer program (BCC), HSD, presented data on the BCC. Beginning with background, Ms. Weinberg identified Medicaid as the payer for the program's services. The Medicaid category started in July 2002 as an optional category of eligibility. She indicated that over 1,700 women have been enrolled in the BCC since its inception. Enrollment by fiscal year (FY) is given in the handout and includes new and existing enrollees for each year. She then reviewed total expenditures for each year, noting the drop in expenditures in FY 2011, which she said was due to some reductions in outpatient hospital reimbursement and physician fees. She stated that the FY 2012 data are incomplete, as all claims have not yet been received. She spoke of the breakdown by category of costs, with outpatient and physician services being the highest costs. Ms. Weinberg introduced Dr. Ann Foster, who is an ob-gyn and medical director at the HSD.

Ms. Weinberg mentioned that in prior years, there has always been a line item for hospice costs, but not for the current FY, which the HSD is interpreting positively. She added that women qualify for the BCC using Department of Health (DOH) screening and then the BCC helps qualifying women to access services. Since last year, the BCC implemented tobacco cessation treatment services for those in pregnancy-related categories of eligibility and for those under the age of 21. Under these services, Medicaid pays for counseling and drug items and reimburses pharmacies for face-to-face sessions.

The co-chair asked for clarification on exactly how the eligibility works in the BCC. Ms. Weinberg said that this category is for women whose income is up to 250% of the federal poverty level (FPL). Such women are encouraged to be screened for breast and cervical cancer through the DOH, which is essentially the doorway into the program. If the women test positive, they would be eligible through the DOH for enrollment in the BCC.

A committee member asked if the smoking cessation program overlaps with the program at the Lovelace Respiratory Research Institute (LRRI); the BCC is not associated with LRRI. Several committee members questioned whether there are measurements in place to gauge the program's effectiveness. Members expressed how helpful it is to see how funding dollars are spent. Although there are not any current follow-up procedures in place, Ms. Weinberg assured the committee that her division would look at ways to measure effectiveness from those who have received services to see whether they have subsequently quit smoking. She added that although there is already literature that shows the effectiveness of doctors counseling their patients on the risks of tobacco use, there are not specific measurements of this.

Committee members spoke about the importance of tracking data of youth and adult smoking rates and evaluating the effectiveness of programs through the University of New Mexico (UNM), as well as how crucial it is that youth understand that smoking could be a cause of cancer. Some members questioned the effectiveness of pharmacists being the go-between for

giving out knowledge about the cessation of smoking. Dr. Foster assured the committee that pharmacists play an important role and are often an underutilized resource in health care.

A committee member questioned the federal match in this program, which is at 90%. Another committee concern was whether the state is confident that women with breast or cervical cancer are getting the appropriate treatment or missing out. Ms. Weinberg responded that because of the doorway into the program, women are missed. For example, women without health insurance get screened elsewhere and so they are not eligible to come into this program; at the same time, the DOH has done a lot to raise awareness that the program exists. Committee members suggested that the single portal into the system could be a fundamental flaw in the system and wondered how the state can address this issue if the program is regulated federally. Ms. Weinberg assured committee members that the HSD has had this discussion, and that this was a legislative choice made at the program's start. Committee members agreed that this is an appropriate issue for an upcoming committee-endorsed bill.

A committee member questioned if the coordination between the DOH and HSD is smooth, and Ms. Weinberg indicated that the program works well between the two agencies. She added that the issues the two agencies work with include being sure those who are screened and found positive get into the system quickly so treatment can be administered right away and ensuring that women receive their full category of eligibility quickly by working together to find providers and services that the women need.

In response to committee questions about the relationship between cancer and tobacco use, Dr. Foster spoke of the tendency of carcinogens in tobacco to gather at the cervix, thus causing cervical cancer. She added that the human papillomavirus is sexually transmitted and is the primary cause of cervical cancer, for which the screening in this program is crucial. She spoke of the importance of early intervention, prevention and screening to prevent the progression of cervical cancer. She said that the cause of breast cancer is primarily genetic but that tobacco use is implicated in head and neck cancers. In response to a question on guidelines for the screening of older women, Dr. Foster said that there are specific guidelines that the U.S. Public Health Task Force follows, including recommending a mammogram screening every year. She said that the start date is under debate but that there is the benefit of an increased life span when screening is started at age 50.

In response to a committee member's question about whether there is a proven relationship between prostate cancer and cigarette smoking, Dr. Foster indicated that although her profession is as an ob-gyn, she has seen that incidents for both prostate and breast cancer are extremely high and frequently go undiagnosed.

A committee member questioned how the costs for mammograms are paid, and Dr. Foster said that the appropriate state share depends on the category of eligibility for members and there can be no member out-of-pocket expenses. She also clarified that there is not a breast and cervical cancer waiver, but an optional eligibility category under Medicaid that covers women

with incomes up to 250% of the FPL.

Gina Love of the BCC under the DOH said that the eligibility program is for those age 30 or older living at 250% of the FPL and who are either uninsured or underinsured. She added that there are 250 hospitals throughout the state that participate in the initial screening in addition to the DOH facilities that offer screening.

In response to a committee member's question about whether the eligibility program can be changed under state law, Ms. Love said that New Mexico originally chose the most restrictive option when the law was adopted and that there is a fiscal consideration here because the program was funded to serve only 15% to 18% of the population. Committee members expressed concern over the possibility that someone income-eligible could be diagnosed and not treated under this program and the desire to research and solve this problem through legislation.

Committee members suggested that what is needed is a public health motivational campaign for all women that includes clear numbers for income level rather than the mysterious "250% of FPL" so that eligibility can be determined more readily. Members said that it is incumbent on the HSD to have a vigorous outreach program for Medicaid along with a branding process in plain English to provide outreach to all.

In response to a committee member's questions regarding coverage of counseling sessions for tobacco cessation programs, Ms. Weinberg said that the HSD would research and get back to the committee on what reimbursements are mandated under state law and how the department works with this.

Senator Feldman moved that the minutes from the second meeting of the TSROC be adopted. Representative Picraux seconded the motion, and the committee approved the adoption unanimously.

DOH Performance Reports for Tobacco Use Prevention and Control Program; Diabetes Prevention and Control Program; HIV/AIDS Services; and Breast and Cervical Cancer Screening Program

Dr. Michael Landen, state epidemiologist, and David Vigil, chief of the Chronic Disease Prevention and Control Bureau, DOH, spoke to the committee about funding that comes to the DOH from tobacco settlement revenue and several programs administered by the DOH. Dr. Landen said that the operating budget for these programs has been the same for the last two years.

Mr. Vigil highlighted the diabetes program, stating that the program follows the Centers for Disease Control and Prevention's (CDC's) guidelines. He added that during FY 2012, three new requests for proposals (RFPs) were issued that focused on reducing adult and youth tobacco use. With the many contracts that go out to communities, 16 have been issued, one of which is a cessation services contract for a "1-800 quit now" telephone-based service. In an effort to reach

more youth, other contracts are focused on including web-based and text services. One of the new contracts has an evaluation component that defines rates of quitting more clearly. He added that two new RFPS were issued this year as well that focus on mass media marketing and mobilizing priority populations by working with groups targeted by the tobacco industry.

In delineating the percentages of adult smokers, Mr. Vigil said that the downward trend in New Mexico (21.5%) is following the current national trend (21.2%). Also, in 2011, the CDC implemented a new survey method that allows for the addition of cell phone calls; this caused a slight bump in New Mexico's adult smoking rates, and the DOH is not trending these lines together because of the change in methodology, which actually results in truer estimates. He spoke of the decline in the percentage of youth smoking — from 30.2% to 19.9% between 2003 and 2011. (This represents 9,900 fewer high school smokers.) New Mexico's youth smoking rate is slightly higher than the national level, which is at 18.1%, he stated.

Mr. Vigil then focused on the "QUIT NOW" program, which includes a new feature in 2012 that can use text messaging to send a photo of a loved one to encourage the receiver not to smoke; the message pops up on the receiver's phone at crucial times during the day. He said that the DOH works with pharmacists to help assess whether people want to quit smoking and whether to speak to them. He spoke of the proactive engagement with health care providers in helping people to quit smoking. (Refer to page three of the handout for figures of enrollees and information calls made in QUIT NOW.)

Mr. Vigil highlighted the tobacco use prevention and control program's (TUPAC) "have a heart" media campaigns that produced a series of Native American art cards from the Navajo Nation, Jicarilla Apache Nation and the Pueblos of Santa Clara and Tesuque. He said that 23,000 cards have been passed out and were well received and that this is a joint effort of the diabetes and tobacco cessation programs.

Another program with great success is the "show you know" effort, in which youth compete to create a lyrical interpretation of why one would not want to smoke, and then these songs are featured online. Other initiatives with youth include work with high school students across the state to change community program access to cigarettes.

A committee member questioned the figures that show advances in youth cessation of smoking; what was discussed involved members remembering declines in high school smoking statistics, but increases in chewing tobacco and snuff intake. Also, the DOH mentioned that youth initiation into smoking is happening earlier. In addition, it has been determined that it is just as difficult for youth to quit as adults.

Another committee member mentioned that a lot of the TUPAC funding has been directed toward youth, and Mr. Vigil clarified that the quit line and media efforts receive significant funding and a lot of money goes to youth for prevention, but the largest expenditure is for tobacco cessation services.

In response to a question about if there is another way to track tobacco use prevention and cessation, for example, by directing prevention services to the youth and cessation services toward the older population, Mr. Vigil said that it is correct that people start smoking at a younger age and not really after age 24.

A committee member suggested that it would be interesting to track expenditures in tobacco use prevention and cessation as related to adult and youth declines in smoking. Mr. Vigil indicated that the DOH does have a breakdown of tobacco use prevention and cessation contracts and can provide a further breakdown of these categories. He added that the program uses two different media marketing companies, McKee and Rescue Social Change, which work with youth. A committee member praised the DOH for its creativity in adjusting to new technologies and being innovative and culturally sensitive in its programming.

In response to a committee member question about whether the youth smoking figures include other forms of ingesting tobacco, Mr. Vigil said it does not; the figures are solely from cigarette smoking itself.

A committee member questioned if the military has a smoking cessation program, and Mr. Vigil indicated that the DOH is working with Kirtland Air Force Base to evolve a stringent policy regarding tobacco use and enhancing cessation services within the military population.

In response to a question about whether these programs are reaching youth in different ways, Mr. Vigil spoke of the ad campaign that features a man who has half of his chin removed and who also speaks to kids in schools, which has been quite effective.

Next, Mr. Vigil gave statistics from the diabetes prevention and control program that indicate there are 198,417 adults in New Mexico with diabetes and 546,820 with pre-diabetes. The figures for the U.S. are 26 million adults with diabetes and 79 million with pre-diabetes. He stressed that if all adults with pre-diabetes developed diabetes, there would be a huge impact on the state's health system. Figures over time show a slow and steady increase over the past 10 years. He added that because the 2011 figures include cell phone data, there has been an increase in the estimated number of adults with diabetes, and that this data cannot be gauged just yet. Mr. Vigil spoke about the ways in which funding has been spent in this program, which include: additional staff; initiatives such as the ABC project and the national diabetes prevention program; services focusing on child health; kitchen creations, which features classes that teach participants in cooking schools how to cook balanced meals; professional development with health educators; online courses for professional training; and collaborations to reach and target individuals in tribal and other communities affected by diabetes.

Mr. Vigil talked about the screening program for the BCC as a gateway for getting Medicaid services. He said that 1,380 women were served last year who might not have otherwise received a mammogram. Also, 16% of all eligible individuals in the state are covered by funds from the CDC. This program can only serve women age 50 and older, but he added that

the DOH uses funds to help younger women as well. He stressed the importance of the programs receiving federal matching dollars. He reviewed eligibility criteria for women wanting to enter the BCC and said that the language for eligibility is very clear and uses dollar amounts rather than the percentage of the FPL to make it clearer to those applying. In FY 2012, the BCC served 11,996 from all funding sources combined. He also stated that in FY 2012, more diagnostic mammograms were provided through the program to women whose services were paid from tobacco settlement revenue. He added that all legislative funding goes directly into the clinics and that federal grant money and some general fund money is what goes to overhead. He ended by saying that the DOH's intent is to integrate programs to better serve varying populations.

A committee member questioned the structure of programs as eligibility- or entitlement-based, and the response was that there is a federal program for breast and cervical cancer screening and a different program for Medicaid and that the DOH is the gatekeeper, and that once someone qualifies for the program, it is an entitlement program. The committee member then pointed out that the program could be classified as a gatekeeping program that is funding-limited; once through, the participant gets into the Medicaid program, which has a 90% federal match and is an entitlement program. Committee members agreed that all women with breast cancer should have access to the Medicaid program, and that the best solution would be to broaden the funnel at the front end to allow for more women to be included and helped.

Another committee member pointed out that the issue is money, and with the current one-to-three match, the state is already spending $638 million, adding that it is really a separate issue to open access to more women. Another member said that by not doing the appropriate amount of early screening, the state might end up paying more for care.

In response to a committee member's question on state discounts for cancer drugs, Dr. Landen pointed out that the state receives a good discount on HIV drugs and he will check on discounts for cancer drugs for the committee. He added that the DOH has a huge HIV drug program and that the state does receive a significant break on childhood vaccines through the CDC.

Dr. Landen indicated that tobacco settlement funds helped to initiate the healthy kids program in New Mexico and that the CDC sustains this program. He said that it is a community-based, coalition-driven program to motivate kids and families to eat healthier and to be more physically active. In response to committee members' questions about cooking classes in the schools, one program that was spoken about takes place at a Hatch elementary school, which developed a culinary arts and mentorship program, with the intention of building a program that is sustainable by leveraging community and state resources and designing innovative ways to deliver services without having to hire outside teachers. In Hatch, for example, the elementary school wanted to create a garden, and the middle school has an agricultural class that got involved to make this happen without hiring resources outside the school system.

Dr. Landen spoke of the cost-efficient funding in the hepatitis and harm reduction

program, which provides funding for contract nursing services to do the work, which includes investigation of hepatitis cases; obtaining adult blood specimens for hepatitis B and C tests; giving hepatitis vaccinations to high-risk clients; and HIV/AIDS counseling, education and referral. In discussing achievements in the harm reduction program, Dr. Landen said that funding from tobacco settlement revenue is a great help in terms of the syringe exchange and overdose prevention program.

In response to a committee member's question on whether such a program exists in other states or if New Mexico is one of the first, Dr. Landen said that New Mexico was an early innovator and other states now have similar programs, but that New Mexico's model program is one of the most impressive and aids in overdose prevention.

A committee member questioned the CDC's recommendation for screening for hepatitis C, which is that all adults born between 1947 and 1965 be screened. This is because the CDC, through surveillance data nationally, has determined that a lot of people do not know they have hepatitis C and that the screening could help the individual but also have some prevention benefits. Dr. Landen indicated that the federal program is likely based on recent survey data that suggest there is a bigger problem nationally than is perceived.

Committee members were given a handout answering questions from the last meeting concerning cancer statistics. Highlights of these statistics include a large drop in the white/non-Hispanic rate of colorectal cancer in New Mexico, which leaves the Hispanic rate much higher. Although there was a wide gulf between the two as related to rates of colorectal cancer deaths, there has been a recent convergence of the Hispanic and non-Hispanic rates, making them much closer in recent years. In addition, charts comparing New Mexico rates to those of the rest of the U.S. for several types of cancer reveal that New Mexico cancer rates are favorable in males as compared to the U.S., with the only male cancer rate higher in New Mexico being for liver cancer. In comparing cancer rates for females, the only two that show higher rates in New Mexico than the rest of the U.S. are for leukemia and thyroid cancer, but both are only slightly higher.

Tobacco Settlement Permanent Fund (TSPF) Performance and Balances

Steve Moise, state investment officer, State Investment Council (SIC), reported good news to the committee, saying that New Mexico's investment returns at the SIC have been very strong this year. He added that the state's permanent funds earned 9.5% in the calendar year to date. Also at the end of the June quarter, the land grant permanent funds performed number one nationally. He said that the SIC has been restructuring the state's investments and that the fixed income allocation in the first asset class has been restructured as well. He spoke of reforms that have been put into place that impact the TSPF that include portfolio restructuring, governance reform and the restructuring of the SIC. He added that the SIC moved its core bonds portfolio to external management and that less than 10% of its investments are now managed in-house, which is fiduciarily responsible. Mr. Moise indicated that the restructuring in 2010 has fully taken hold and that members of the council are deeply engaged in all of the SIC's doings. He

stated that the SIC hired Hewitt EnisKnupp to assess the SIC's progress since the fiduciary review of 2010, in which the SIC was given 82 suggestions on how to improve. Most of these improvements have been completed, he said, along with suggestions for legislative initiatives, which have been endorsed by the SIC and are being drafted.

Mr. Vince Smith, deputy state investment officer, SIC, gave details of the TSPF to the committee. He spoke of the fund's allocation targets, which consist of 61% in public equities, of which 51% are U.S. equities and 10% are non-U.S. equities; 29% in fixed income; and 10% in absolute return or hedge funds. Mr. Smith said that the SIC wants legislative assistance in determining whether this asset allocation mix is too aggressive. A committee member added that the difficulty is in counting the state's permanent fund as part of its reserves and how that ties the SIC's hands in terms of investment. The difference between the TSPF and the other funds the SIC manages is that all the other permanent funds have constitutional protection. The original legislative intent for the TSPF, a committee member said, is that when a permanent fund is established, it would eventually have a corpus and an interest rate to draw on as a revenue stream. Mr. Moise said that this would be ideal, but that is not what is currently in place. He pointed to the fact of the TSPF's numbers, which indicate $484 million in contributions and $428 million in distributions. He added that whatever the legislature could do to ensure that the corpus of the fund remains intact would be fiduciarily responsible.

A committee member encouraged Mr. Moise to speak to the Legislative Finance Committee (LFC) about this issue to ensure that the corpus is built so that the money in the corpus equalizes the money needed to borrow against it. In response to a committee member's question about how to protect the corpus, Mr. Moise said that he does not know the full answer to that question but that the SIC has been encouraged to increase inflows to the Severance Tax Permanent Fund, which was once at 50% and is now at 5%. Because the TSPF does not have the same protection as the state's other permanent funds, it can be drawn from in case of a budgetary shortage.

The TSPF breakdown for investment is 60% stocks and 40% bonds, and he stated that the best returns in the stock market are currently at about 9% and in the bond market the yield is at about 2%. The TSPF earns about 6.2% on its investments, which he said is not enough, but that the SIC cannot buy the same assets for the TSPF as for other funds because its status does not provide it with enough liquidity. In comparison, the land grant permanent fund represents 70% of the SIC's assets.

In response to committee members' questions, Mr. Smith indicated that if there is protection to the corpus and the TSPF is not a reserve fund, the SIC could make investments for the fund that would have better returns. He said that the SIC could make recommendations on the fund after review by the fund's managers on both investment and governance matters. Committee members agreed that when the SIC makes its presentation to the LFC, the TSROC should be invited and receive per diem to sit in to hear this; a request will be made to the New Mexico Legislative Council for approval of this idea.

Greg Geisler from the LFC said that the LFC needs to be clear on what the committee's desires are and that a conversation with all involved is a good idea.

Review of Handouts and Spreadsheets Regarding the TSPF and Previous Committee Questions

Ms. Mathis reviewed a grouping of handouts and told the committee that she will be updating the TSPF program spreadsheet to make it more readable. She will also put together a small booklet that represents the spreadsheet in a more user-friendly format.

Ms. Mathis said that among the requests over the TSROC's last two meetings was one that would compare smoking rates in states that have raised cigarette taxes versus those that have not. She referred to the CDC's "Morbidity and Mortality Weekly Report" of March 30, 2012, which indicates that increasing the price of cigarettes reduces the demand, especially among youth and young adults. Increasing cigarette excise tax is the most common way that governments have raised taxes on cigarette sales. A committee member questioned whether the report separated out states that have cigarette sales from sovereign nations as New Mexico does, which affect the revenue received from taxes, and a suggestion was made to ask the National Conference of State Legislatures for a listing of states that do not have tribal sales. Another committee member suggestion was to look at the shift from off-reservation sales to tribal sales in the last 10 years to see if there was a shift in the majority of sales, and a suggestion was made to ask the Attorney General's Office for confirmation of this data and how the data are analyzed.

Ms. Mathis said that the committee had requested looking at tobacco sales to youth as well as how these sales correlate to taxation. She referred members to an *Albuquerque Journal* article on hookah use, which speaks to the impression that youth have that hookah smoking is less damaging than cigarette smoking. She also referred to a surgeon general report that says that while cigarette smoking is declining, other forms of tobacco use are proving to be popular with youth and that this group of smokers is not captured as much in the research. She added that a 2010 survey found that 17% of the nation's high school students and 4% of middle school students had used a hookah. Hookah use has been reported in at least 33 states, mainly those having large universities; other statistics show water pipe use and state that using water pipes poses a serious hazard. Among the hazardous components in these alternative ways of ingesting tobacco are the increased volume of smoke inhaled, the high levels of toxic compounds and the fact that by using heat sources to burn tobacco, these fuels produce their own toxins as well. Other risk factors include that of secondhand smoke of both tobacco and fuels, causing a serious risk to nonsmokers, as well as the sharing aspect of water pipes, which increases the risk of the transmission of communicable diseases.

Ms. Mathis brought forth the idea from the World Health Organization working group that water pipes and water pipe tobacco should be subject to the same regulations as tobacco, which would include strong health warnings, the prohibition of claims of safety, prevention measures that include water pipes and prohibition of the use of these alternative means in public

places in a manner that is consistent with other forms of tobacco and information about risks. She added that there is currently no law for hookah bars in New Mexico and that the Dee Johnson Clean Indoor Air Act permits hookah lounges.

The committee closed the day's work with a brief preliminary discussion of proposed legislation by asking the departments to guide it on what legislation is needed to ensure that there is not the existing narrow funnel or lottery for women seeking eligibility in the BCC. A committee member suggested amendments to the Dee Johnson Clean Indoor Air Act related to hookah bars. Another member expressed interest in reintroducing the bill that the committee endorsed in 2012 and the governor vetoed that would have amended the Cigarette Tax Act to clarify that nonparticipating manufacturers have to pay escrow on all tobacco sales in New Mexico, whether on tribal property, federal property, state property or any retail operation. Members were provided with a handout delineating legislation related to the TSROC from the past several years and were encouraged to review this and decide what they want the committee to introduce and which bills they want to sponsor.

The meeting came to a close with a public comment segment. Lobbyist Marc Saavedra of UNM gave an update on House Bill 315, which was sponsored by Representative Luciano "Lucky" Varela, and the appropriation of $1 million for lung cancer research in the name of the Speaker of the House Ben Lujan and Carmen Lujan. He said that the bill went through the legislative process with no appropriation and that the speaker did not want existing funds to be used for this purpose. In discussing other means of appropriating this funding, Mr. Saavedra said that he is working with the Office of the Governor and that UNM would like to propose supplemental legislation to take care of funding for this research. He added that the current appropriation is nonrecurring and questioned whether the committee would want to make it recurring.

Adjournment

There being no further business, the TSROC adjourned at 2:21 p.m.